

COUNTY OF TULARE
OFFICE OF THE COUNTY ADMINISTRATOR
ADMINISTRATIVE REGULATION NO. 37
(Resolution No. 2009-0461)

SUBJECT: Gift and Donation Acceptance Policy

EFFECTIVE DATE: June 16, 2009

SCOPE:

A policy is necessary to establish thresholds for accepting donations to the County and for accepting donations which would be considered as gifts to individual officials. The policy tracks the requirements of FPPC Regulation 18944.2 regarding reporting of gifts received. This Policy supercedes Resolutions 83-1647 and 85-0364.

POLICY FOR THE ACCEPTANCE OF DONATIONS:

General donations are those which are not intended to be used by an individual public official. Pursuant to the authority of Government Code section 25355, the Board of Supervisors may accept or reject any gift, bequest, or devise made to or in favor of the County; or to or in favor of the Board in trust for any public purpose. The Board may hold and dispose of the property and the income and increase thereof for those lawful uses and purposes as are prescribed in the terms of the gift, bequest, or devise.

As authorized by this statute, the Board may delegate to any County officer or employee the power to accept any gift, bequest, or devise made to or in favor of the County, with such limitations as the Board may determine, provided the officer or employee shall file with the board at least quarterly a report that describes the source and value of each gift valued in excess of ten thousand dollars (\$10,000) or any other amount as determined by the board.

Pursuant to Government Code section 25356, if any gift, bequest, or devise is unaccompanied by any provision prescribing or limiting the uses and purposes to which the property received, or the income or increase thereof, may be put, it may be put to any uses and purposes which the Board prescribes, and the proceeds or income therefrom shall be paid into the general fund of the County.

GENERAL DONATIONS:

The County has three thresholds for accepting general donations.

- A. Donations which may be accepted by a County Department/Agency.
 1. The County Librarian may accept any gift or bequest of personal property to the Library with an individual value of \$2,500 or less.
 2. All other County Department/Agency Heads may accept any gift or bequest of personal property earmarked for use by that department/agency with an individual value of \$1,000 or less.

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3. The Librarian or other Department/Agency Head shall report to the Board of Supervisors twice each year in September and March regarding all such gifts, except, if gifts from a single source within a single fiscal year reach an aggregate value in excess of \$10,000, quarterly reports to the Board are required thereafter.
- B. Donations which may be accepted by the County Administrative Officer.
 1. With the exception of the donations accepted by any Department/Agency described above, all individual donations with a value of \$10,000 or less may be accepted by the County Administrative Officer.
 2. The County Administrative Officer shall report to the Board of Supervisors twice each year in September and March regarding all such gifts, except, if gifts from a single source within a single fiscal year reach an aggregate value in excess of \$50,000, quarterly reports to the Board are required thereafter.
- C. Donations which must be accepted by the Board of Supervisors.
 1. Donations with an individual value of more than \$10,000 shall be accepted by formal action of the Board of Supervisors.
 2. The donee department, if any, or the County Administrative Office, if the gift is general, shall be responsible for the agenda item.

DONATIONS FOR USE BY INDIVIDUAL OFFICIALS:

Donations which must be used by an individual official (such as travel or lodging) may be made to the County in such a way that the donation does not need to be reported as a gift to an individual public official. This section of the Policy is pursuant to the Political Reform Act (Gov. Code, Sec 81000 et seq.) and FPPC Regulation (tit.2, Cal. Code Regs.) Sec 18944.2 and does not include the acceptance of Tickets or Passes.

The rules for determining which donations are subject to Fair Political Practices Commission (FPPC) Regulation § 18944.2 are complex, and this policy does not attempt to describe them. The following rules apply only if it has already been determined, with assistance from County Counsel or the FPPC (the State body charged with administering the Political Reform Act) as needed, that the donation is subject to this regulation.

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In order for a donation subject to this section to be considered a gift to the County, and not a gift to an individual public official, ALL of the following requirements must be met:

- A. The County must control the use of the gift. The County Administrative Officer, or his or her designee, must determine and control the County's use of the donation. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the County Administrative Officer, or his or her designee, shall select the individual who will use it. If a designee is taking this action, the designee may not select himself or herself as the individual who will use the payment.
- B. The gift must be used for official County business.
- C. The gift must be reported on the appropriate FPPC form, within 30 days after the gift is used. The following information must be included on the form:
 1. A description of the payment, the date received, the intended purpose, and the amount of the payment (or the actual or estimated value of the goods or services provided).
 2. The name and address of the donor. If the donor is not an individual, the report shall also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other persons for the specific purpose of making the payment to the County, the report shall contain the names of and amounts given by these persons.
 3. The County's use of the payment, and the name, title, and department of the County official for whom the payment was used. If applicable, the report shall include the date(s) and place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and other related expenses.
- D. The form must be signed by the County Administrative Officer or his or her designee, and must be maintained by the County as a public record subject to inspection and copying under Section 81008(a).
- E. The form shall be filed with the Clerk of the Board of Supervisors. The Clerk shall post a copy of the completed form on the County website.
- F. The Clerk of the Board of Supervisors shall keep two logs of the forms, one in chronological order, and the other organized by the individual official who used the gift.
- G. The forms, website postings, and logs shall be kept for a minimum of four years.

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There are certain prohibitions and restrictions governing the acceptance of donations of travel by certain officials.

- A. Government Code 82020 specifies that any gift of travel, including transportation, lodging, and meals, must be considered a gift to the individual official for the following elected positions:
 - 1. Members of the Board of Supervisors,
 - 2. Auditor-Controller/Treasurer-Tax Collector,
 - 3. Assessor/ County Clerk Recorder,
 - 4. District Attorney, and
 - 5. Sheriff.
- B. Government Code 87200 specifies that any gift of travel, including transportation, lodging, and meals must be considered a gift to the individual official for the following positions:
 - 1. Member of the Board of Supervisors,
 - 2. County Treasurer,
 - 3. District Attorney,
 - 4. Candidates for any of these three offices at any election,
 - 5. Chief Administrative Officer,
 - 6. County Counsel,
 - 7. Members of the Planning Commission, and
 - 8. Other public officials who manage public investments (i.e., certain subordinate employees in the Treasurer's office).

(Note: for the employees listed in this statute, the restriction applies only to the individual person holding the specified position, and not to any other deputies or subordinates in those departments.)

- C. A payment for travel, including transportation, lodging, and meals, cannot be accepted by the County in lieu of being considered a gift to an individual official, if the payment for travel exceeds the County's reimbursement rates for travel, meals, and lodging.
- D. A payment for travel, including transportation, lodging, and meals, cannot be accepted by the County in lieu of being considered a gift to an individual official, unless the County Administrative Officer, or his or her designee, has approved the travel in writing in advance of the date of the trip.

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FRIENDS OF TULARE COUNTY

Although donations to the County are deductible from income taxes, just like any other charitable contribution, some donors prefer to donate only to a private entity which is eligible for charitable contributions pursuant to Internal Revenue Code section 501(c)(3). If a potential donor to the County has such a preference, the potential donor should be directed to Friends of Tulare County (FOTC), through the County of Tulare Health & Human Services Agency, which serves as FOTC staff.

If such a potential donor wishes to donate a restricted gift to FOTC for ultimate use by the County, County staff assigned to serve as FOTC staff shall coordinate with the department ultimately intended to use the gift, to ensure that the County is willing and able to use the gift in the restricted manner. If the potential gift is not logically limited to use by a particular department, the CAO shall be the coordinating department. County staff assigned to serve as FOTC staff shall ensure that these restricted gifts are accounted for properly until actually accepted by the County.

County staff assigned to serve as FOTC staff may accept gifts to FOTC without reference to the thresholds for departments in accepting gifts to the County. Instead, they shall follow the procedures set by FOTC for its staff in accepting and reporting gifts to FOTC.

DISTRIBUTION OF TICKETS OR PASSES

This policy is intended to comply with FPPC Regulation § 18944.1, which sets forth the circumstances under which the County's distribution of tickets or passes to or at the behest of a County official does not result in a gift to the individual official. The regulation requires the Board of Supervisors to adopt a policy regarding tickets or passes, and to report the distribution of tickets or passes.

The term "ticket or pass" shall be defined as in FPPC Regulation § 18944.1. As of the date of the adoption of this policy, the definition was "admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose." The definition excluded "any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event."

Tickets or passes received or distributed by a County official which do not fall under the regulation may be subject to disclosure by the official and may be subject to gift limits.

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This policy shall be posted on the County website in a prominent fashion.

- A. The public purposes to be accomplished by the distribution of tickets or passes by the County are as follows:
 - 1. to attend an event sponsored by the County (such as a Health Fair or the World Ag Expo),
 - 2. to attend a community event in which the County is a participant (such as a trade fair),
 - 3. to gather information about the operation of a facility similar to one operated by, or to be operated by, the County (such as a museum),
 - 4. to promote tourism as a form of economic development,
 - 5. to promote business networking to enhance staff development,
- B. The distribution of any ticket or pass by the County to, or at the behest of, a County official must accomplish a public purpose of the County.
- C. No County official may transfer any ticket or pass, distributed to such official pursuant to this policy, to any other person, except to members of the official's immediate family solely for their personal use.

PROCEDURES

When the County provides a ticket or pass to a County official that otherwise meets the definition of gift under Government Code section 82028 and is not exempt under applicable FPPC regulations, the official need not report the ticket or pass as a gift to the individual official, provided that all of the requirements under FPPC Regulation § 18944.1 are met. (Note: this policy does not apply to a ticket or pass provided to a County official by a source other than the County for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the County. By definition under the regulation, this is not a gift to the official.)

In accordance with this regulation, the following requirements shall apply:

- A. With respect to a ticket or pass from an outside source provided to a County official by the County:
 - 1. The ticket or pass may not be earmarked by the original source for use by the County official who uses the ticket or pass;
 - 2. The County must determine, in its sole discretion, which County official may use the ticket or pass.
 - 3. The distribution of the ticket or pass by the County must be made in accordance with this policy.

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- B. With respect to a ticket or pass provided by the County to a County official, which ticket or pass the County obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the County controls the event (such as a county fair), or (iii) that is purchased by the County at fair market value, the distribution of the ticket or pass must be made in accordance with this policy.

REPORTING

The above requirements do not apply to a ticket or pass which the County and County official both treat as income to the official. However, such a ticket or pass must be reported as described below.

The distribution of a ticket or pass pursuant to this policy, including a ticket or pass that is treated by the County official and the County as income, shall be reported on the appropriate FPPC form.

- A. The information reported shall include the following:
 - 1. The name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization other than the County at the behest of a County official, the County may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;
 - 2. A description of the event;
 - 3. The date of the event;
 - 4. The face value of the ticket or pass;
 - 5. The number of tickets or passes provided to each person;
 - 6. If the ticket or pass is behested, the name of the official who behested the ticket or pass; and
 - 7. A description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.
- B. The form must be signed by the County Administrative Officer or his or her designee.
- C. Posting and Retention of Report
 - 1. The report must be maintained by the County as a public record subject to inspection and copying under Section 81008(a).
 - 2. The form shall be filed with the Clerk to the Board of Supervisors. The Clerk shall post a copy of the form on the County website in a prominent fashion within 30 days after the distribution of the tickets or passes.
 - 3. The forms and website postings shall be kept for a minimum of four years.